IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 2ND JULY 2007 / 11TH ASHADHA 1929

T.R.C.No.500 of 2001

(AGAINST THE ORDER IN T.A.198/1997 DATED 23.01.2001 OF THE KERALA AGRICULTURAL INCOME TAX & SALES TAX APPELLATE TRIBUNAL, ADDITIONAL BENCH-II, PALAKKAD)

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PETITIONER/APPELLANT:-

M/S.P.K.UTHUP AND BROTHERS,
ARECANUT MERCHANTS, PAZHANJI, THRISSUR DISTRICT,
REPRESENTED BY PARTNER, P.T.SIMON.

BY ADV. SRI.C.K.THANU PILLAI
SMT.S.SHAINA

RESPONDENT/RESPONDENT:-

THE STATE OF KERALA.

BY SENIOR GOVERNMENT PLEADER SRI.MUHAMMED RAFIQ.

THIS TAX REVISION CASE HAVING BEEN FINALLY HEARD ON 02/07/2007, ALONG WITH T.R.C.NOS.507 OF 2001 & 511 OF 2001, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.Dattu,C.J. & K.T.Sankaran,J.

T.R.C.Nos.500/2001, 507/2001 & 511 of 2001

Dated, this the 2nd day of July 2007

ORDER

H.L.Dattu,C.J.

T.R.C.No.500 of 2001 arises out of an order passed by the Sales Tax Appellate Tribunal, Additional Bench-II, Palakkad in T.A.No.198 of 1997 dated 23rd January, 2001 for the assessment year 1987-88. T.R.C.No.507 of 2001 arises out of the order passed in T.A.No.199 of 1997 dated 23rd January, 2001 for the assessment year 1988-89, while T.R.C.No.511 of 2001 arises out of the order passed in T.A.No.202 of 1997 dated 23rd January, 2001 for the assessment year 1991-92 by the same Tribunal.

2. In all these Tax Revision Cases, parties are common. Issues raised are also common. Therefore, they are clubbed together, heard and disposed of by this common order.

3. The assessee is a dealer registered both under the Kerala General Sales Tax Act ("KGST Act" for short) and Central Sales Tax Act ("CST Act" for short). He is doing business in arecanut. He purchases arecanut from unregistered dealers and effect consignment sales. In the annual return filed, the assessee had claimed exemption from payment of turnover tax under Section 5(2A) of the KGST Act relying upon the notification issued by the State Government in No.SRO.717/88. The assessing authority has rejected the said claim solely on the ground that the assessee has not produced the declaration form prescribed under the notification for the purpose of claiming exemption under the notification. The view of the assessing authority is accepted by the first appellate authority as well as the Tribunal in the appeals filed by the

assessee. The Tribunal in its order after extracting the notification issued by the State Government has come to the conclusion that if for any reason the petitioner seeks exemption from payment of turnover tax under the Act by virtue of the notification issued by the State Government in No.SRO.717/88, he is expected to produce the declaration form prescribed under the notification or at least satisfactory evidence to suggest that arecanut has suffered tax at the earlier stages of sale or purchase.

4. Sri.C.K.Thanu Pillai, the learned counsel appearing for the assessee, by relying upon a decision which has been dissented by this Court subsequently, would contend that since the petitioner is the last purchaser in the State, insistence of the production of the prescribed declaration form is wholly unnecessary. The reliance is on the decision of a Division Bench of this Court in *M/s.P.I.Varghese & Sons* v. *State of Kerala* [(2002) 10 KTR 157 (Ker).

5. Per contra, learned counsel appearing for the State Government would submit that it is mandatory on the part of the assessee in order to claim exemption from payment of turnover tax under notification SRO No.717/88 that he shall either produce a declaration form prescribed under the notification or satisfactory evidence to the effect that at some point of sale or purchase turnover tax has already been paid.

6. In *Refeeque Enterprises* v. *State of Kerala* [2006 (1) KLT 207), the assessee was also a dealer in arecanut. The assessment year in question was 1991-92. He was the last purchaser in the State. He had also claimed exemption from payment of turnover tax under the notification No.SRO.717/88, but had not produced the declaration form from the dealer who paid the turnover tax or any other evidence in support of the case that the turnover tax had been paid.

7. The Court after relying upon the observations made by the apex Court in *State of Punjab & Ors*. v. *Punjab Fibres Ltd. & Ors.*, [(2005) 139 STC 200] has stated as under:

> "We have no hesitation to say that filing of declaration is a mandatory requirement applying the principle laid down by the apex court in *Punjab Fibres Ltd.'s* case. We are therefore unable to subscribe the view of the Division Bench in *P.I.Varghese's* case especially, in the light of the decision of the Supreme Court in *Punjab Fibres Ltd.'* case. Assuming a liberal approach can be made as stated in *Gangadharan* v. *Addl.S.T.O.*, 1993 KLJ (Tax Cases) 432 and in *Thomas Varghese's* case [1994 KLJ (Tax Cases) 37] that in the absence of a declaration, satisfactory evidence could be adduced in lieu of the declaration, no satisfactory evidence has been adduced by the assessee in the present case".

8. In the instant case also, the assessee has not produced any declaration form as provided in the notification; nor has he produced any evidence as required under the notification. In the absence of the appropriate declaration form or any evidence in lieu of the same, in our opinion, the Tribunal was justified in rejecting the request of the assessee for exemption from payment of turnover tax under Section 5(2A) of the Act. In that view of the matter, the question of law raised by the assessee in the memorandum of Tax Revision Cases requires to be answered in the negative and against the assessee and in favour of the Revenue.

Ordered accordingly.

H.L.Dattu
Chief Justice

K.T.Sankaran
Judge

vku/-